Supreme Court, U.S.
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No. 99-528

IN THE
Supreme Court of the United States

DAVID A. FIELDS, ROBERT P. WEISS
and JACK D. STEWART,
Petitioners,
v.
UNITED STATES DEPARTMENT OF LABOR
ADMINISTRATIVE REVIEW BOARD and
FLORIDA POWER CORPORATION,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONSE OF RESPONDENT FLORIDA POWER CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court of Appeals properly reviewed the Final Decision and Order of the Department of Labor's Administrative Review Board utilizing the substantial evidence standard of review, as mandated by the Administrative Procedure Act and in conformity with the other circuits that have addressed the issue.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the court whose judgment is sought to be reviewed are David A. Fields, Robert P. Weiss, and Jack D. Stewart, Petitioners; the United States Department of Labor Administrative Review Board, Respondent; and Florida Power Corporation (FPC), Respondent. Pursuant to Sup. Ct. R. 29.6, Respondent FPC states that its parent company is Florida Progress Corporation and that no other publicly held company owns more than ten percent of FPC's stock.

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STATEMENT OF THE CASE

A. Introduction

This case finds its genesis in the deliberate misconduct of Petitioners David Fields, Robert Weiss, and Jack Stewart. During two successive midnight shifts over the 1994 Labor Day weekend, these three reactor operators at Respondent Florida Power Corp.'s (FPC) Crystal River Nuclear Power Plant deliberately manipulated the controls of a plant safety system so as to cause the system to exceed operating parameters. Doing so caused warning alarms, but, rather than immediately bring the system back within prescribed operating parameters, Petitioners not only ignored the alarms but deliberately continued to create increasingly severe violations of plant procedures. As the court below summarized it, the record is indisputable that Petitioners "moved knowingly and dangerously beyond their authority when, on their own, and fully aware that their employer would not approve, they conducted experiments inherently fraught with danger." App. 5-6.

The legal issue throughout this case has been what impact Petitioners' deliberate misconduct had on their ability to bring an action against FPC under Section 211 of the Energy Reorganization Act, 42 U.S.C. § 5851. While Section 211 generally provides a cause of action for nuclear industry employees who allege that they were discriminated against for "blowing the whistle" on nuclear safety concerns, subsection (g) of the statute directs that an action is not available to "any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation" of nuclear regulatory requirements. 42 U.S.C. § 5851(g). Below, the Eleventh Circuit concluded that "it is clear that petitioners' unauthorized frolics were just what Congress envisioned when it made the whistleblower statute inappli-

cable" to employees who deliberately cause violations. App. 6.

That issue, however, is not the issue presented by Petitioners to this Court. Rather, although Petitioners' arguments have been soundly rejected in four successive decisions below, Petitioners contend that in the last decision—the review by the federal appellate court—the court applied an erroneous standard of review in affirming a final order of the United States Department of Labor (DOL) and so deprived them of due process. As demonstrated below, no compelling basis justifies Supreme Court review of that issue.

B. Summary of Facts

As noted, Petitioners Fields, Weiss, and Stewart twice deliberately manipulated a plant safety system at FPC's Crystal River Nuclear Power Plant. That system, known as the makeup tank (MUT) system, is one of the primary safety systems designed to cope with a so-called loss of coolant accident, *see* App. 42, the type of accident that occurred at Three Mile Island in 1979. On the nights of September 4 and 5, 1994, Petitioners and their crew intentionally and without approval manipulated the hydrogen pressure and water level in the MUT in such a manner as to exceed the established operating limits for the system, as set forth in a calculation known as "Curve 8."

During the first unauthorized test, on September 4, 1994, the crew added hydrogen and water to the MUT, thus increasing the pressure and triggering the system alarm. *See* App. 14. They began this test while the nuclear reactor was operating at full power. Then, ignoring the alarm and with the pressure/level already exceeding the maximum limits of Curve 8, the crew rapidly reduced the MUT water level while plotting the data concerning the pressure/level relationship. *Id.* During the entire first test, the MUT system was in alarm condition and the

actual pressure/level readings significantly exceeded Curve 8. This alarm condition existed for 43 minutes. *Id.* Indeed, Petitioners and their crew were unable to clear the alarm on September 4 by raising the water level because the MUT pressure had exceeded Curve 8 by so significant an amount, and an operator was required to manually vent the hydrogen gas.

Petitioners conducted a second test during the night on September 5. During this second attempt, learning from their lack of foresight the night before, the crew took the unusual step of stationing a licensed operator—fully dressed in a protective radiation suit—in the reactor's auxiliary building to vent hydrogen immediately in the case of an accident. App. 14. The crew avoided the initial problem created the night before (*i.e.*, exceeding Curve 8 and triggering the alarm *before* the test even began) by allowing the MUT to stabilize after they had added hydrogen gas but before they began dropping the water level. The crew then rapidly reduced the water level and triggered the alarm. As on September 4, the crew ignored the alarm and *continued* to lower the water level in the MUT, causing Curve 8 to be exceeded by an ever-increasing margin. The crew caused Curve 8 to be exceeded for 35 to 37 minutes on September 5. App. 14. Petitioners admitted that their purpose in conducting the unauthorized tests was to "challenge" Curve 8. App. 43, 63.

Notably, Petitioners had never sought permission to conduct these tests. They sought no guidance on safety precautions they might have taken during the tests. They never even alerted management or the NRC of their intent to conduct them. App. 44, 60. They spent little time planning them, App. 42, and—in violation of an NRC requirement—did not ensure that a pre-test safety analysis had been completed. *See* App. 17 n.9 (finding that Petitioners' conducting the unauthorized tests without prepa-

ration of a required written safety evaluation violated an express NRC regulation, 10 C.F.R. § 50.59). And, contrary to Petitioners' representations to this Court, Petition at 5, none of them had attempted to contact management to address any concerns they may have had about Curve 8 prior to taking it upon themselves to conduct the unauthorized tests.[1]

Petitioners' unauthorized tests on the Crystal River nuclear reactor led to extensive investigations by the NRC and FPC. When confronted with their actions, Petitioners, apparently recognizing that their actions were improper, deliberately concealed the first of their tests from FPC and in sworn testimony to the NRC for ten months. FPC eventually discharged Petitioners Fields and Weiss and disciplined Petitioner Stewart and the other control room operators involved in this episode.

For its part, the NRC found that both of the tests constituted an unsafe action which caused MUT pressure to diverge further into the unacceptable region of Curve 8. The NRC issued a Notice of Violation to FPC and individual Letters of Reprimand to all the operators involved. The Letters of Reprimand emphasized that their "[p]erformance of an unauthorized evolution affecting safety systems is a significant violation." *See* App. 47. The NRC also faulted Petitioners for their failure to raise concerns about Curve 8 with FPC management or the NRC prior to conducting the tests and concluded that "[t]his experience should emphasize to you the importance of not taking unilateral action such as conducting unauthorized evolutions." *See* App. 48, 50.

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1 On page 5 of their Petition, Petitioners reference a memo dated September 2, 1994 stating that issues concerning Curve 8 would be "closed." Petitioners fail to inform this Court that this memo was a draft, that they were expressly invited to discuss concerns about Curve 8 with management, and that they never did so. These facts have never been disputed.

C. Course of Proceedings Below

After FPC had discharged Fields and Weiss and disciplined Stewart, Petitioners filed complaints with the DOL under Section 211, alleging that they were discharged or disciplined for engaging in activities protected by that statute. Section 211 establishes a three-level process for adjudication of Section 211 claims, and the DOL rejected Petitioners' claims on three successive occasions. First, in accordance with DOL's procedures, 29 C.F.R. Part 24 (1999), the Wage and Hour Division investigated the complaints and concluded that Petitioners' allegations of discrimination "cannot be substantiated" and that the action taken against Petitioners was "justified."

Petitioners then appealed that initial determination against them to the DOL's Office of Administrative Law Judges. Following extensive discovery, including the depositions of Petitioners, FPC filed a Motion for Summary Decision and/or Dismissal based on Section 211(g). After thorough briefing by both parties and an opportunity to submit evidence, DOL Administrative Law Judge (ALJ) David W. DiNardi conducted a day-long hearing on FPC's motion. In briefs and at the hearing, counsel for both parties addressed in detail the facts of this case and the meaning of the phrase "deliberately causes a violation." Concluding that the undisputed facts—in particular, various admissions by petitioners in their deposition testimony—provided "overwhelming" evidence that Petitioners had acted deliberately and without direction from FPC management when they twice conducted the unprecedented tests on the nuclear reactor, Judge DiNardi issued a Recommended Decision and Order Granting FPC's Motion for Summary Decision on March 11, 1997. App. 39.

Petitioners then sought review by the DOL's Administrative Review Board (Board or ARB), which issues final orders of the DOL under Section 211 as the designee of

the Secretary of Labor. The parties engaged in another round of briefing, and the Office of the Solicitor of Labor also filed an amicus brief on behalf of the Acting Assistant Secretary for Occupational Safety and Health. After briefing, the Board—the third agency body to review Petitioners' misconduct—agreed in its Final Decision and Order that Petitioners, acting without direction from FPC, had deliberately caused violations of NRC requirements. The Board largely adopted the legal standard for determining whether an employee deliberately causes a violation that had been urged by the Solicitor of Labor as amicus. The Board accepted Judge DiNardi's recommendation, granted FPC's request for summary decision, and dismissed the complaints. App. 9-35.

Petitioners then petitioned the United States Court of Appeals for the Eleventh Circuit for review of the final order of the Board. FPC intervened in the appeal as a respondent. After briefing and oral argument, a panel of the Eleventh Circuit unanimously held that undisputed record facts demonstrated that Petitioners' actions in conducting the unauthorized tests constituted precisely the type of misconduct that Section 211(g) encompasses. With respect to the standard of review, the court below noted:

> In reviewing cases arising under the ERA, we are required to conform to the standard of review set forth in the Administrative Procedure Act. 42 U.S.C. § 5851(c)(1). Thus the ARB decision will be overturned only if it "is unsupported by substantial evidence or if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A), (E). App. 5.

The panel concluded that the Board's "determination was reasonable and supported by substantial evidence contained in the record." App. 6. Accordingly, the panel affirmed the Board's final order dismissing the complaints.

On May 11, 1999, Petitioners filed a petition for rehearing or en banc review in the Eleventh Circuit. The petition contended that the panel should have reviewed the Board's final order de novo. The Eleventh Circuit denied the petition for rehearing in a per curiam decision on June 28, 1999. App. 7-8.

Thus, four successive rulings were issued in the proceedings below, and each ruling has denied Petitioners' claims.

REASONS FOR DENYING THE PETITION

Petitioners' Petition for certiorari should be denied because no compelling reasons exist for granting certiorari in this case. Despite their attempt to present a question that grandly incorporates notions of due process, Petitioners' real argument—advanced throughout their Petition—is a run-of-the-mill claim that they should not have lost their case on summary judgment because issues of fact supposedly existed. Petitioners essentially request that this Court engage in a review of the facts of their case to determine whether any genuine issues escaped the attention of the multiple decisionmakers who have issued four successive rulings against them. They fail to present any compelling policy arguments or issues of national interest, much less a conflict with the decisions of this Court or among lower courts, that might warrant review. For the reasons set forth below, Respondent FPC respectfully requests that this Court deny certiorari.

I. PETITIONERS' CENTRAL ARGUMENT IS MERELY THAT ERRONEOUS FINDINGS OF FACT WERE MADE

A. The question Petitioners present to this Court is whether the Eleventh Circuit was required to review the final order of the Board dismissing their complaints under

a de novo standard of review, rather than the familiar substantial evidence standard of review that the Eleventh Circuit applied. At the outset, it is important to note that in their Petition, Petitioners fail to identify *any* case in which the standard of review they urge has been applied in cases similar to this one. And, as demonstrated below, it is well settled that the substantial evidence standard of review utilized by the Eleventh Circuit in this case is the correct standard for reviewing the decision of a federal agency under a federal statute that the agency has been entrusted to administer. Indeed, Section 211 expressly provides that the APA standard of review applies. 42 U.S.C. § 5851(c)(1).

Notwithstanding the question they attempt to present, Petitioners' Petition belies that the real issue here is not the standard of review applied at the last stage of the lengthy proceedings below. Instead, Petitioners' true argument is that summary judgment should not have been granted because, they contend, issues of fact existed. Petitioners expend substantial effort in informing this Court that summary judgments should be granted with caution (Petition at 21); that summary judgment is inappropriate where genuine issues of fact exist (*id.*); that summary disposition should be sparingly granted where issues of intent are involved (*id.* at 23); and so on. Then, revealing their true argument, Petitioners contend that they were not "given the opportunity to have the ALJ, as fact finder, observe their demeanor as they testified" (*id.*); that the Board improperly "weigh[ed] evidence" without a hearing (*id.* at 24); that the Board did not fully consider the evidence (*id.*); and that the Board "went on to grant summary judgment, without the benefit of a trial" (*id.* at 13). These are precisely the kind of arguments that the DOL flatly rejected in granting summary judgment in FPC's favor. Moreover, the argument that genuine issues of fact precluded summary judgment was the

very issue petitioners brought to the Eleventh Circuit, Petition at 11, but which the Eleventh Circuit rejected. No interest—and certainly no interest of national concern—would be served by having this Court review whether, on the detailed factual record developed in this unique case, summary judgment was appropriate.

B. Despite their argument that summary judgment was improper because issues of fact existed, Petitioners fail to demonstrate to this Court why a different standard of review by the Eleventh Circuit would actually have made any difference to the outcome here. They argue that the evidence should have been evaluated in a light most favorable to them before summary judgment was granted, but this is precisely what the Board did. App. 19 ("The facts are considered in the light most favorable to the party opposing the motion for summary decision."). Using this proper standard, the agency nonetheless found that no genuine issues of fact existed so as to warrant a hearing. App. 35. The Eleventh Circuit had the record before it and found no genuine issues of material fact that the DOL had missed, and so found that the Board's final order was supported by substantial evidence. App. 5-6. Petitioners' generalization that "[d]e novo review would have revealed genuine issues of material fact," Petition at 25, is simply not persuasive or supported by the record, as Petitioners had ample opportunity to identify such issues of fact at all stages of this case, yet were unable to do so.

II. THE DECISION BELOW IS NOT IN CONFLICT WITH THIS COURT'S DECISIONS IN *AGOSTO v. IMMIGRATION & NATURALIZATION SERVICE* AND *WEINBERGER v. HYNSON*

Petitioners' argument that the decision below is in conflict with prior decisions of this Court is in error. Petition at 17. Neither of the two decisions of the Court

cited in the Petition addressed the issue presented now concerning the standard of review of an agency's grant of summary judgment.

A. *Agosto v. INS*—Contrary to the representations in the Petition, this Court's decision in *Agosto v. INS*, 436 U.S. 748 (1978), has no bearing on the question presented. In *Agosto*, the Court decided only whether in the circumstances of that case an individual was entitled to "a de novo judicial determination" in district court of his claim that he was an American citizen, not an alien subject to deportation.

The Petitioner in *Agosto* claimed he had the right to a de novo hearing pursuant to a special statutory scheme granting such review in certain deportation proceedings. Specifically, as this Court's opinion in that case spells out, under Section 106(a)(5) of the Immigration and Nationality Act, a federal appellate court is directed to transfer immigration proceedings to a federal district court if the proceedings raise genuine issues of fact concerning the individual's nationality. 436 U.S. at 752-53. In the district court, the petitioner is to receive a hearing de novo on his or her nationality claim.[2] This Court emphasized that the Immigration and Nationality Act created a statutory standard of judicial review "separate" from the APA. *Id.* at 752-53.

Agosto is readily distinguishable from—indeed is wholly inapplicable to—the present case. *Agosto* dealt with a narrow range of deportation proceedings where American citizenship is in question. It deals not with the APA, but with a special statutory scheme under our immigration

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[2] Petitioners mischaracterize *Agosto* by suggesting that the Court there "explained that the agency's summary decision was subject to de novo review at the appellate level" (Petition at 17). The statutory scheme at issue there concerned not the standard of appellate review of agency determinations, but a requirement for de novo hearing in federal district court.

laws. The case did not establish any precedent concerning APA review of agency orders, much less review of Section 211 claims. *Agosto* involved merely interpretation of Congress' statutory requirement that de novo hearings be held if genuine issues of fact exist in certain deportation proceedings.

B. *Weinberger v. Hynson*—This Court's decision in *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973), is equally inapplicable to the question presented. *Weinberger* dealt with the procedural scheme for approval of new drugs by the Food and Drug Administration (FDA). The Federal Food, Drug and Cosmetic Act, as amended, provided a summary judgment mechanism under which the FDA was directed to withdraw approval of a new drug application if the applicant failed to produce substantial evidence concerning the drug's efficacy. A primary issue in *Weinberger* was whether this "so-called administrative summary judgment procedure" was valid, *id.* at 617, and the Court held that it was: where an applicant could not demonstrate as a threshold matter, and by substantial evidence, the efficacy of the new drug, the FDA was not required to hold a hearing on the application.

Thus, if anything, *Weinberger* affirms that the DOL may properly employ summary judgment procedures in administrative proceedings under Section 211. The *Weinberger* Court's only foray into the standard of review is found in a footnote, which emphasized that the Court was reviewing the agency's answer to the threshold question "whether a hearing is required by statute." 412 U.S. at 623 n.19. The Court explained that an agency's determination on that issue would not be subject to the substantial evidence standard of review. But that is not the issue in the present case. Petitioners have not argued and do not argue that Section 211 mandates that a hear-

ing be held despite the lack of genuine issues of material fact. Instead, Petitioners appear to agree that the DOL may employ summary judgment procedures, and argue only that those procedures were not properly implemented in this case.

Contrary to Petitioners' assertion, neither *Agosto* nor *Weinberger* hold that administrative summary judgments are subject to de novo review. Petition at 17. Accordingly, Petitioners have not identified any conflict between the decisions of this Court and the decision of the court below.

III. CERTIORARI IS NOT WARRANTED BECAUSE NO CIRCUIT CONFLICT EXISTS

Petitioners also fail to point this Court to any appellate decision in conflict with the decision of the court below. Because there is no circuit conflict at all, certiorari is not warranted.

A. First, there is no merit to Petitioners' argument that review is warranted because the Eleventh Circuit's use of the substantial evidence standard of review "departs from the accepted and usual course of judicial proceedings." Petition at 12. The statute at issue in this case, Section 211, explicitly requires that review of a DOL order "shall conform" to the APA. 42 U.S.C. § 5851 (c)(1). The Eleventh Circuit noted and adhered to this plain command: "In reviewing cases arising under [Section 211], we are required to conform to the standard of review set forth in the Administrative Procedure Act." App. 5. The Eleventh Circuit thus decided this case as it was required to do; there was adherence to the statute, not any "departure" as Petitioners allege.

B. The few cases that have addressed the standard for appellate review of summary dispositions of Section 211 cases are in full agreement with the decision below. In

Macktal v. Department of Labor, 171 F.3d 323 (5th Cir. 1999)—a case Petitioners fail to bring to this Court's attention—the Court of Appeals for the Fifth Circuit recently reviewed the DOL's grant of summary judgment to the respondent in a Section 211 case using the same substantial evidence standard of review as did the Eleventh Circuit in the decision below. "This court must affirm the Secretary's decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law, or unless the decision is not supported by *substantial evidence*." *Id.* at 326 (emphasis added). Using this standard, the Fifth Circuit affirmed summary judgment by the DOL in favor of the respondent in that case.

Likewise, when it was presented with the issue, the Sixth Circuit adopted the substantial evidence standard of review in reviewing the Secretary's summary dismissal of a Section 211 case. *Billings v. Dole*, 923 F.2d 854 (Table), No. 90-3633, 1991 WL 7088 (6th Cir. Jan. 25, 1991): "We shall affirm the Secretary's decision and order because it is supported by substantial evidence and is in accordance with the law." *Id.* at *1.[3] Accordingly, the Fifth, Sixth, and Eleventh Circuits have all invoked the substantial evidence standard upon review of Section 211 cases in which summary disposition was granted. Respondent Florida Power is aware of no decisions that hold otherwise, and Petitioners point to none. No conflict on this point exists.

C. Decisions that address the more general issue of the standard of appellate review of agency grants of summary judgment also are in harmony with the decision below. In *Doolin Security Savings Bank v. FDIC*, 53 F.3d 1395, 1398 (4th Cir. 1995), the Court of Appeals adhered to the requirements of the APA and reviewed the

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[3] The court also held that the DOL's use of summary judgment did not deprive the complainant of due process. *Id.*

FDIC's grant of summary decision under the familiar substantial evidence standard of review. Likewise, in *Puerto Rico Aqueduct & Sewer Authority v. EPA*, 35 F.3d 600, 604 (1st Cir. 1994) (*PRASA*), the First Circuit upheld the Environmental Protection Agency's grant of summary judgment on the issue whether the petitioner was required to comply with Clean Water Act requirements, reviewing the EPA's determination under the "arbitrary, capricious, or abuse of discretion standard." The First Circuit observed that deference was due to the EPA's determination. Although Petitioners in the present case rely on *PRASA*, *see* Petition at 14, 20, the First Circuit's decision demonstrates that there is no conflict among the courts on the appropriate standard of review: in *PRASA*, as in the decision below, the court did not employ the de novo standard of review Petitioners now urge, but rather accorded the agency the deference it was due.

D. Petitioners' attempt to point to a conflict is unavailing. At pages 14-15 of the Petition, Petitioners offer a string cite of cases from the circuits that, they contend, demonstrate a conflict among the circuits. This argument is not correct: *none* of the string-cited cases involved review of an administrative agency's determination; none of them involved the APA at all. Instead, those cases stand only for the wholly uncontested (and for purposes of the present case, irrelevant) proposition that federal appellate courts review Rule 56 summary judgment orders of federal district courts using a de novo standard of review.[4] Nothing in those decisions creates any conflict

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[4] Petitioners argue that de novo review of the Board's Order granting summary judgment was required because de novo review applies to Rule 56 orders. App. 13. This is an unprecedented argument which simply ignores the fact that the APA governs review of final agency orders. It is not the court below that, as Petitioners argue, "craft[ed] an unprecedented . . . exception to the de novo standard of review" (Petition at 13). Rather, petitioners attempt to

with the Eleventh Circuit's application of the substantial evidence standard of review to the Board's final order in this case.

IV. THIS CASE PRESENTS NO MATTER OF NATIONAL IMPORT OR DEBATE

A. While Petitioners attempt to portray this matter as involving broad concepts of due process and administrative law, the focus of this case has been on an exceedingly narrow issue: whether subsection (g) of Section 211 of the ERA barred Petitioners' Section 211 complaints because they deliberately caused violations of nuclear safety requirements. Certiorari is not warranted for a case with such a discrete focus.

Even though subsection (g) was enacted over two decades ago, the present case was the very first in which the DOL was called on to apply that provision. The ALJ assigned to this case noted the "sparse at best" case law that might assist in developing the standard that a respondent in a Section 211 case would be required to meet to establish a Section 211(g) affirmative defense. *See* App. 18, 54-55. On agency review, the Board crafted a revised standard because the matter was one of first impression. App. 28-29. Similarly, the Eleventh Circuit's decision below is the first to have reviewed the DOL's application of Section 211(g).

Moreover, Respondent FPC is aware of no pending cases involving Section 211(g). Given that the present case was the first in the twenty years of Section 211's existence to involve that subsection, it is unlikely that any similar case will arise in the near future. If such cases were to arise, clear precedent has now been established concerning the interpretation of Section 211(g).

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craft a heretofore unrecognized exception to APA review of agency determinations.

B. Even if the question presented is considered apart from the context of Section 211(g) and viewed more broadly as a question of administrative law, the issue has been the subject of virtually no controversy or conflict in the courts or among other authorities. (A database search revealed no citations by other courts to the decision below, nor any mention at all of the decision by the general media.) As noted above, the courts are in harmony that agency determinations of the type at issue here are to be reviewed under the applicable substantial evidence standard of review. Petitioners offer this Court no evidence that the question presented is one of national import or debate.

C. Petitioners attempt to transform this case into one involving Fifth Amendment due process rights, but Petitioners' argument that they have been denied due process is particularly ironic: they have not been denied process due them, but to the contrary have had *four* "bites at the apple." Three times the DOL entertained their claims, and three times that agency dismissed them. On review, the Eleventh Circuit found that the record was clear that Section 211(g) barred Petitioners' claims against FPC. Petitioners have had ample process.

All in all, the decision below is in full accord with well-settled precepts concerning federal appellate review of administrative orders. The Eleventh Circuit gave the DOL's decision in this case the deference it was due. App. 6. *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Petitioners offer the Court no basis for reconsidering these well-settled doctrines of federal review, nor do they explain how, after four successive and decisive findings against them, the result in this case could possibly be deemed unjust.

CONCLUSION

For the foregoing reasons, Respondent Florida Power Corp. respectfully requests that Petitioners' Petition for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit be denied.

Respectfully submitted,

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